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NUMBER 92-

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1992

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THE CONFERENCE OF AFRICAN UNION FIRST COLORED METHODIST PROTESTANT CHURCH and DELBERT L. JACKSON,

Petitioners,

v.

MOTHER AFRICAN UNION FIRST COLORED METHODIST PROTESTANT CHURCH, MORRIS A. COMEGYS, and SARA B. GARDNER,

Respondents.

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ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF DELAWARE

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# APPENDIX TO PETITION

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Volume II: Pages A061 - A119

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injunction (item (C), supra). That certification application contained material that was scandalous, irrelevant, and not supported by any record evidence. (See Pl. Exh. 28, ¶5.) Nevertheless, shortly before or at the time the defendants filed the certification application, their counsel distributed copies of it to the press. (Pl. Exh. 29, Trans. at 24.) The Court (by then alerted to the problem) ordered the defendants' application to be sealed, but that order was not entered until June 19, 1991. By that point the harm had already been done. (Pl. Exh. 29, Trans. at 13-14.) Because the actions of defendants' counsel all occurred before June 19, they did not violate an existing order of this Court.[11]

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[11]Moreover, the June 19th order only directed that one document -- the certification application -- be sealed. The defendants

Also claimed to constitute contempt is later filed other, different documents with both the Delaware and United States Supreme Courts that contained the same impertinent allegations (see Pl. Exhs. 30, 31), and the defendants' counsel publicly distributed copies of those documents. Although that conduct was not in keeping with the standards expected of counsel who practice before this Court, it did not violate this Court's June 19, 1991 Order. Ultimately, this Court was asked to, and did, order the defendants' counsel not to distribute further any copies of her petition for certiorari to the United State Supreme Court. Counsel appears to have complied with that order.

Although the defendants did not technically violate any order of this Court, their counsel has displayed, in the complained-of acts and in her conduct through-

the filing and prosecution of the District out this litigation, a disturbing propensity to become personally identified with and involved in her clients' cause, and litigation-related activities. Counsel appears, perhaps serendipitously, to have steered her clients through narrow loopholes in this Court's orders, or to have taken advantage of small windows of time before orders prohibiting the challenged conduct would be entered. She has also come perilously close to being a witness in this case, by becoming personally involved in (in some cases, an instigator of) certain of the activities of which the plaintiffs complain. While vigorous advocacy by an attorney is to be expected, the attorney must take care not to cross the line between being an advocate for, and a personal participant in, a client's cause. When that line is crossed and the "attor-

Court action by St. Paul's Church (item (A), supra). Because that matter is somewhat more complex, some background is again helpful. on April 19, 1991, this Court entered its temporary restraining order which pertinently directed that:

> The defendant, and his agents, employees, officers, successors, assigns, and all others acting in concert with him are hereby enjoined and restrained from interfering with the quiet title, use, enjoyment and governance of The Church facility located at Ninth and Franklin Streets, Wilmington, Delaware, by the duly elected trustees of the [Mother Church] or by its members during the following times . . . .

(Pl. Exh. 32.) The plaintiffs then prosecuted their motion for a preliminary in-

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ney" and "client" roles are blurred so as to become indistinguishable, it becomes difficult for the attorney to discharge properly the duties that flow from the other roles the attorney must occupy, namely, that of objective advisor to her client and officer of the Court.

junction, which was argued on May 6, 1991, and was decided in the plaintiffs' favor on May 15, 1991.

On May 8, 1991 (two days after oral argument before this Court on the preliminary injunction motion), St. Paul's Church filed an action in the United States District Court for the District of Delaware (the "District Court action"). St. Paul's Church is a Washington, D.C. church that is a member of the Conference. In the District Court action, St. Paul's Church sought to enjoin the Trustees (two of whom are plaintiffs in this action) from interfering with St. Paul's Church's title to the properties of the Mother Church in this case. Although the essential predicate of the District Court complaint was that St. Paul's Church had some independent "title" to or other cognizable interest in the Mother Church's properties, in fact that

was not the case. And while the defendants deny that St. Paul's Church was acting as their agent in filing the District Court action, the record clearly shows otherwise.[12] In reality the District Court ac-

[12]The record establishes that St. Paul's Church, acting through its pastor, the Rev. Jonah Lindsay, was the defendants' agent in bringing the District Court action. Rev. Lindsay signed the complaint in the District Court lawsuit. (Pl. Exh. 21.) Bishop Jackson has admitted that Rev. Lindsay is a Conference official. (Pl. Exh. 12, Jackson Dep. at 156-57.) Moreover, the record also reveals a pattern of activity in which Bishop Jackson and Rev. Lindsay worked together in the power struggle against the Mother Church's Trustees which culminated in the litigation of this Court. (See id.; Pl. Exh. 19; Pl. Exh. 18, ¶5; Pl. Exh. 16, Moon Dep. at

tion was a thinly disguised effort by the
15-16.) Rev. Lindsay even had Bishop Jackson's (and the Conference's) counsel bring the District Court lawsuit. (Pl. Exhs. 21-23.) Finally, the defendants have not shown (or even articulated) what independent legal interest a church located in Washington, D.C., would further by seeking to interfere in the affairs of an independent church located in Wilmington, Delaware. Indeed, any standing of St. Paul's Church to assert an interest in properties of the Mother Church could only have been as an agent of the Conference (or Bishop Jackson). As the defendants acknowledge, "St. Paul['s Church] has the same relationship to the Bishop the Mother Church has." (Def. Ans. Trial Br. at 23.) That is, the only connection existing between St. Paul's Church and the Mother Church is through the Conference of which both chur-

defendants to remove to a federal forum a controversy that had previously been argued and made sub judice before this Court, in order to derail a preliminary injunction that the defendants apparently (and correctly) anticipated.

The District Court complaint alleged that this Court's temporary restraining order violated the Federal Civil Rights Act and the United States Constitution. That complaint, however, was based upon the identical facts and merits theory that the defendants were simultaneously presenting to this Court. Concurrently with the filing of the District Court action, St. Paul's Church moved for a federal court order temporarily restraining the Mother

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ches were members. Therefore, the only interest that St. Paul's Church could claim in the Mother Church would be by virtue of its membership in the Conference.

Church Trustees from (among other things) continuing to prosecute this (Chancery) action. That motion was heard on May 10, 1991, five days before this Court handed down its preliminary injunction opinion. In an oral ruling, then-District (now Third Circuit) Judge Jane R. Roth denied the motion, and in setting forth her reasons, stated:

> I am also concerned by the equities of the situation in that, as Ms. Shearin has described, the role of St. Paul's Church in the Conference, and as I reviewed the language of the temporary restraining order issued by the Court of Chancery, I would find that it would seem very likely that St. Paul's Church would fall into the category of all others acting in concert with Bishop Jackson. Therefore, I think there is a strong argument to be made that the plaintiffs here are in contempt of Chancery. That, in the area of equities, would also be a persuasive factor in not issuing the temporary restraining order out of this court.

(Pl. Exh. 22 at 31-32.)

Judge Roth then admonished counsel that before proceeding further she (Ms.Shearin) should consider very carefully whether

this Court's restraining order applied to St. Paul's Church in the District Court action as it did to the defendants in this Chancery action. Judge Roth repeated that admonition in her order of the same date:

> The Court admonishes plaintiff to carefully consider whether it is covered by the temporary restraining order issued by the Court of Chancery of the State of Delaware on April 19, 1991 in Morris A. Comegys, et al. v. Delbert L. Jackson, C.A.No. 12055 (Del.Ch. 1991), which binds Defendant Delbert L. Jackson "and his agents, employees, officers, successors, assigns, and all others acting in concert with him." The Court will closely review this matter both on the issue of whether abstention is appropriate under Younger v. Harris, 401 U.S. 37 (1971) and Pennzoil Co. v. Texaco, Inc., 481 U.S. 1 (1987), and on the question of whether Rule 11 sanctions may be appropriate as suggested by defendants.

(Pl. Exh. 23, ¶2.)

Despite those admonitions, the plaintiff in the District Court action (which was acting as a proxy for and on behalf of the defendants in this action) continued to prosecute that lawsuit. Thereafter, Judge

Roth's successor, District Judge Sue L. Robinson, dismissed the District Court action on the ground of abstention, noting that although St. Paul's Church had been ordered to review the application of the abstention doctrine to that case, it "has failed to address the doctrine as well as any procedural bars preventing state review of alleged constitutional violations." St. Paul's Church v. Comegys, D.Del., C.A.No. 91-72-SLR, Robinson, J., Mem.Op. at 5 (Mar. 24, 1992).

Undoubtedly spurred by the admonitions in Judge Roth's May 10, 1991 Opinion and Order, the plaintiffs now ask this Court to determine that the defendants' prosecution of the District Court action was a contempt of this Court's April 19th Order prohibiting them (or their agents) from "interfering with the quiet title, use, enjoyment and governance of The Church facil-

ity." (Pl. Exh. 32.) There is no question that by seeking to relitigate in a federal forum claims that should have been raised and prosecuted in this forum, the defendants were attempting an "end run" around this Court's April 19, 1991 temporary restraining order. It is also clear that from the start the effort was a misadventure that gained the defendants nothing (except added expense) and did little to enhance their counsel's professional stature. Given the District Court action's transparent purpose, the defendants' conduct was less than commendable. However, having considered the defendants' conduct in light of the strict requirements for civil contempt, I am constrained to conclude that it did not violate any clear directive of this Court's April 19, 1991 Order. Therefore, that conduct, while creating cause for concern for other reasons

(see n. 11, supra), did not amount to civil contempt.

A cardinal requirement for any adjudication of contempt is that the order allegedly violated give clear notice of the conduct being proscribed. Dover Veterans Council, Inc. v. City of Dover, N.H.Supr., 407 A.2d 1195, 1196 (1979) ("It is a prerequisite to the exercise of the civil contempt power that the underlying order clearly describe what the alleged contemnor must do to avoid the sanction."); Mattingly v. Houston, Md. Ct. App., 250 A.2d 633, 635 (1969) ("Before a person may be held in contempt for violation of an order or decree it must be definite, certain and specific in its terms."); State v. Pownal Tanning Co., Vt.Supr., 459 A.2d 989, 991 (1983) ("We agree that as a general rule before a person may be held in contempt for violating a court order, the order should

inform him in definite terms as to the duties imposed upon him. The order must be specific and definite so that it leaves no doubt as to its meaning.").

This Court's April 19, 1991 Order proscribed certain conduct. However, the filing of an action in another court was not included. Had the possibility of that kind of collateral attack been suggested at the time the April 19th Order was entered, the Court would certainly have prohibited such conduct, at least insofar as it was calculated to interfere with the Court's legitimate jurisdiction over this controversy. However, as entered, the temporary restraining order did not expressly forbid the filing of any lawsuits in another court, and cannot fairly or objectively be read to have done so by implication.

For the above reasons, none of the three complained-of acts rises to the lev-

el of a contempt of any order entered by this Court.

V.

The plaintiffs also seek an order directing the defendants to pay their legal fees. The apparent basis for that claim is that the same conduct by the defendants that the plaintiffs argue amounted to contempt (see Part IV, supra) also constituted bad faith.

This Court has the power to award legal fees incurred by a party by reason of bad faith acts by the opposing party in the course of litigation. Tandycrafts, Inc. v. Initio Partners, Del.Supr., 562 A.2d 1162, 1164 (1989); Weinberger v. UOP, Inc., Del. Ch., 517 A.2d 653, 656 (1986). While the complained-of conduct was a product of defense counsel's flawed perception of her professional role and of what constituted appropriate litigation strategy, I cannot

conclude, based on the evidence presented, that those tactics amounted to "bad faith" as would justify shifting the plaintiffs' legal fees to the defendants.[13] The defendants' tactics were, it appears, employed to further their (incorrect) perception that they had a legitimate interest in the properties at issue. The Court is aware that defense counsel's tactics forced plaintiffs' counsel to expend additional legal time and work that would otherwise have been unnecessary. Those additional efforts will be taken fully into account in any fee

[13]The Court does not purport to opine as to whether bringing the District Court action violated Rule 11 of the Federal Rules of Civil Procedure. That issue was apparently raised (or at least suggested) by the plaintiffs in their capacity as defendants in the District Court action, and was an issue to be decided by the District Court.

application presented to this Court by plaintiffs' counsel at the conclusion of this case.

VI.

Lastly, the defendants advance several counterclaims and procedural arguments. They contend that: (i) the Conference is entitled to an accounting, money damages, and attorney's fees from the Mother Church's Trustees; (ii) Bishop Jackson is entitled to money damages; (iii) because the Court has certified a plaintiff class, it should also certify the class as counterclaim defendants so that the defendants can recover damages on a class-wide basis; (iv) the Court should not have granted the preliminary injunction, and would not have done so had a portion of the record not inadvertently failed to reach the Court; and (v) the Conference's business records should have been admitted into evidence at

trial.

The defendants' counterclaims are based on the defendants' position that the Mother Church's Trustees and members are not the lawful Trustees and members (see Def. Ans. Trial Br. at 25-26), which position the Court has rejected. Because those counterclaims are meritless, so too is the defendants' request for certification of a class of counterclaim defendants. The defendants' remaining contentions amount to rearargument. In addition to lacking merit, those contentions come far too late.

* * *

For the above reasons, I find that the properties in question belong to the Mother Church, whose Trustees and members have the exclusive power to dispose of them and to govern the affairs of the Mother Church as set forth in its Articles of Association. The lawful congregation of the Mother

Church (as of the time of the vote to disaffiliate) consisted of the 229 individuals listed in Plaintiffs' Exhibit 20. The lawful Trustees of the Mother Church are the named plaintiffs and the other individuals listed in Plaintiffs' Exhibit 1, all of whom validly voted to disaffiliate the Mother Church from the Conference. To the extent that a membership vote was necessary, the requisite number of members also validly voted to disaffiliate the Mother Church from the Conference. Counsel shall submit a form of order consistent with this Opinion.

Civil Action No. 12055

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE IN AND FOR NEW CASTLE COUNTY

MOTHER AFRICAN UNION FIRST COLORED METHODIST PROTESTANT CHURCH,
a Delaware Corporation,
MORRIS A. COMEGYS and SARA B. GARDNER,
individually and on behalf of all others similarly situated,
*Plaintiffs,*

v.

THE CONFERENCE OF AFRICAN UNION FIRST COLORED METHODIST PROTESTANT CHURCH,
a Delaware corporation,
and DELBERT L. JACKSON,
*Defendants.*

MEMORANDUM OPINION

Date Submitted: May 7, 1991
Date Decided: May 15, 1991

Paulette S. Moore, Esquire, of DOROSHOW, PASQUALE & LiNARDUCCI, Wilmington, Delaware; Thomas S. Neuberger, Esquire, Wilmington, Delaware; Attorneys for Plaintiffs.

K. Kay Shearin, Esquire, Wilmington, Delaware; Attorney for Defendants.

*JACOBS, Vice Chancellor*

At issue on this motion for a preliminary injunction are the ownership rights to a church building and other properties that until recently were titled in the name of Mother African Union First Colored Methodist Protestant Church ("Mother Church"), a Delaware corporation. The competing claimants to those properties are the Mother Church and its Trustees, who are the plaintiffs; and The Conference of African Union First Colored Methodist Protestant Church (the "Conference"), a Delaware corporation, and its Bishop, Delbert L. Jackson ("Bishop Jackson"), who are the defendants.[1]

Plaintiffs filed this lawsuit on April 18, 1991 to remedy certain actions taken by or at the direction of Bishop Jackson. On April 9, 1991, a majority of those persons present at a special congregational meeting voted to disaffiliate the Mother Church from the Conference.[2] The complaint alleges that, in response, Bishop Jackson wrongfully caused the locks to be changed on the church building, posted security guards at the church building, and barred members of the Mother Church from using the building as a place of worship. The plaintiffs claim that neither Bishop Jackson nor the Conference have any ownership rights in, or right to control, the properties at issue, and that such rights reside solely in the Mother Church and its Trustees. The plaintiffs ask this Court to so declare.

The complaint also alleges that on April 6, 1991, after Bishop Jackson learned of the scheduled April 9, 1991 special meeting to consider seceding from the Conference, he caused

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[1] The original parties were the Trustees and Bishop Jackson. As a result of a suggestion made by the Court, the Mother Church and the Conference were later joined as parties plaintiff and defendant, respectively, to enable the Court to afford effective relief.

[2] Unfortunately the terminology is somewhat confusing, because the "Conference" is used to refer not only to the corporate defendant of which defendant Jackson is the Bishop, but also to describe the larger religious association with which certain local churches, including the Mother Church, were affiliated. See Part I, *infra*, of this Question.

deeds transferring the Mother Church's properties to the Conference to be executed and recorded. The plaintiffs further allege that those deeds were not authorized or executed by the plaintiff Trustees, and on their face are fraudulent and a cloud on the Mother Church's title. As a consequence, the plaintiffs seeks an order removing all existing clouds on the title to the Mother Church's properties, enjoining the defendants from further clouding the title, and from otherwise interfering with the plaintiffs' quiet title, use, and enjoyment of those properties.

At the time they filed their complaint, the plaintiffs also moved for a temporary restraining order and a preliminary injunction restoring their (and their congregation's) access to the church properties *pendente lite*. On April 19, 1991, after a hearing, the Court entered a temporary restraining order prohibiting the defendants from "interfering with the quiet title, operation, use, enjoyment and governance of the [Mother] Church facilities located at Ninth and Franklin Streets, Wilmington, Delaware by [the Conference]" during the particular days of the week and the times specified in that Order.

On May 6, 1991, after expedited discovery and briefing, a hearing was held on the plaintiffs' motion for a preliminary injunction. Supplementary memoranda were submitted on May 7, 1991.[3] This is the decision of the Court on that motion.

## I.

The core issue on this motion is which corporation — the Mother Church or the Conference — owns and is legally entitled to control the contested properties. That issue turns importantly on two subsidiary questions: (1) which corporation holds legal title to those properties, and (2) if the Mother Church holds title,

[3] Thereafter, on May 8, 1991, the defendants submitted a large box of documents to the Court, unsolicited and with no cover letter explaining their relevance. The Court attempted to examine those materials, but has found nothing that sheds further light on the issues pertinent to this motion.

whether it has ceded to the Conference its ownership rights or its power to control the use and disposition of those properties. The facts now recited pertain to those questions. Except where noted, those facts are based upon uncontested documents, and are undisputed.

The Mother Church was incorporated as the "African Union Church" on September 18, 1813. (Jackson Dep., Exh. 9; A-150).[4] Article 2nd of that corporation's 1813 certificate of incorporation reads as follows:

> The said Corporation shall have, hold, possess and enjoy the temporal property which they have at this time or shall hereafter acquire. In trust for the Religious uses of the Ministers and Preachers of the said "Union Church" for them and their African Brethren and their descendants of African Race, and also for the Ministers and Teachers of the African Brethren duly licensed and ordained according to the Discipline adopted by this corporation.

Article 4th of that certificate delineates specific requirements that must be satisfied before any property of the corporation can be transferred or encumbered:

> The said Trustees nor their Successors shall not by deed or otherwise dispose of any part or portion of the Estates, real or personal, which may be vested in the said Corporation; nor Mortgage nor Pledge the same for payment of any Debts by them Contracted to any person or persons whomsoever, *unless the same shall be done with the consent of two thirds of the regular Members of the said Corporation.* (Emphasis added).

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[4] "A__" refers to the Appendix to the Plaintiffs' Opening Brief in Support of their Motion for a Preliminary Injunction.

Article 5th provides that an election shall be held for the membership to vote for Trustees of the corporation. One new Trustee will be elected each year, and that Trustee shall then serve a term of seven years. Article 5th further provides that:

> [T]he said Trustees and their successors shall have the entire direction and disposal of the temporal revenues and concerns of the said Church. . . ."

On July 14, 1924, the Mother Church's certificate of incorporation was amended to change the corporate name to "Mother African Union First Colored Methodist Protestant Church," *i.e.*, the Mother Church. (A155-157). Insofar as the record reveals, that amendment is the only one ever made to the 1813 certificate of incorporation; and it left unaffected the remaining provisions of the original 1813 certificate, including Articles 2nd, 4th, and 5th, which remain in force today.

The plaintiffs are the Trustees of the Mother Church, and the duly elected successors to the Trustees named in the original 1813 certificate. There is no claim or evidence that the plaintiffs were not duly elected as Trustees in accordance with the procedures spelled out in that certificate.

There also is no dispute that until April 6, 1991, the Church owned three properties in Wilmington, Delaware ("the properties"): (i) the church building, located at West Ninth and Franklin Streets, which was deeded to the Church on November 4, 1969 (A19-21); (ii) the Pastor's home, located at 125 West 38th Street, which was deeded to the Church on October 22, 1969 (A23-24); and (iii) Mount Olive Cemetery, located on Lancaster Avenue.

There is no evidence of record that the plaintiff Trustees ever transferred the properties to, or for the benefit of, any other person or entity, or that two-thirds of the corporation's regular members ever assented to any such transfer. Indeed, three of the Trustees, including the oldest living Trustee, have testified

by affidavit that the Trustees never authorized or executed a document, ratified by two-thirds of the corporation's members, that placed any asset of the Church in trust for the benefit of any other entity or organization. (A127-135). That evidence stands uncontroverted.

The other party litigant that claims ownership rights in the aforementioned properties is the Conference. For many years, the Mother Church has had a relationship of some kind with the Conference respecting their common spiritual enterprise. However, from a strictly corporate standpoint, the Conference and the Mother Church have always been separate entities. Although the defendants contended at oral argument that the Conference was the corporation founded in 1813 as the "African Union Church," the record shows otherwise. The Conference was incorporated on September 19, 1941 as the "African Union First Colored Methodist Protestant Church." On March 10, 1953 its certificate of incorporation was amended to change the corporate name to "The Conference of African Union First Colored Methodist Protestant Church," *i.e.*, the Conference.

Article THIRD of the 1941 certificate recites that one of the corporation's purposes was:

> To incorporate and unite the Church Government of the Colored Methodist Protestant Churches under the Doctrine and discipline of the African Union First Colored Methodist Protestant Church of the United States of American or elsewhere as particularly set forth in its Sixteenth Revised Printed Edition of said Doctrine and Discipline published at Wilmington, Delaware, September 8-14, 1926, and the Amendments and additions thereto as afterwards made.

Article THIRD also provides that the corporation was "created solely for Religious and educational purposes," and Article SEVENTH provides that the Conference's temporal affairs shall be conducted by that corporation's Trustees who:

> [S]hall have control of the disposal of the property of *the Corporation*, [and] shall also have power to make, amend, alter or rescind the By-laws of their respective Churches . . . subject, nevertheless to the Rules of Discipline of the General Conference, which General Conference shall in itself be created and established, and its membership shall be composed as set forth in the Rules of Discipline of said Church as hereinbefore referred to. (Emphasis added).

Consistent with Article SEVENTH, Article NINTH provides that:

> There shall be a general conference whose time and places of meeting and membership shall be as prescribed in the Book of Discipline and Doctrine of said Church, and the authority of such Conference shall be superior to that of the Trustees and Members of the individual Church and shall control and direct such Trustees and Members as is more fully from time to time prescribed in said Book of Discipline and Doctrine.

The precise relationship between the Conference and its member churches is anything but clear. What can be gleaned from the record is that the Conference was created as a corporate vehicle to carry out the purposes of an earlier-formed voluntary union, association, or affiliation of the various African Colored Methodist Protestant Churches in a spiritual and religious enterprise. That enterprise, which was formed in 1866, is sometimes described as the "Conference" or the "General Conference." The record further indicates that the terms and conditions of that union, association, or affiliation, are governed at least in part by the *Book of Discipline*, the 1990 version of which has been placed of record.[5]

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[5] The full title of that document is *The Book of Discipline of The African Union First Colored Methodist Protestant Church and Connection in the United States of America and The World.*

The Historical Preface to the 1990 *Book of Discipline* recites that a General Convention was held in Baltimore, Maryland on August 25, 1866. That Convention founded a General Conference and created a *Book of Discipline*. The preface goes on to state that the representatives of the African Union Church and the First Colored Methodist Protestant met in General Convention on November 25, 1865 and that the Convention resolved to adopt:

> [A] platform to unite the two branches of Zion into one Church, to be known and distinguished by the name of the African Union First Colored Methodist Protestant Church of the United States of America, or elsewhere.
>
> And to consummate this Union the General Convention does hereby constitute a General Conference, to consist of an equal number of delegates from each Church, to be held in the city of Wilmington, Delaware, on the morning of the 25th day of August A.D., 1866.

(Jackson Aff., Exh. 2, pp. ii-iii).

The resolution goes on to recite that the "First General Conference of the Representatives of the African Union Church, and the First Colored Methodist Church, assembled [and] did then and there form a book of discipline for their future government. . . ." (Jackson Dep., Exh. 2, pp. ii-iii).[6]

From the foregoing the following may be concluded, at least preliminarily: (a) The Conference is a corporation entirely distinct and separate from the Mother Church, having been incorporated 128 years after the Mother Church was formed, in order to carry out the spiritual and religious objectives of the

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[6] The record does not evidence the authenticity or authorship of that resolution, or that the Mother Church formally assented to its provisions. The plaintiffs concede, however, that the Mother Church was, while affiliated with the Conference, subject at least spiritually to the *Book of Discipline*.

General Conference that was established in 1866; (b) The two corporations have not merged, and their relationship, while not easily characterized, is defined at least in part by the *Book of Discipline* which, since its adoption in 1866, has been amended several times; and (c) However the relationship between those corporations may be characterized, there is no evidence that it supplants the power of the Mother Church's Trustees and membership to control the disposition of that Church's physical properties.

The instant litigation is the apparent culmination of a dispute between Bishop Jackson and the late Reverend Maynard Smith, the former Pastor of the Mother Church. According to Bishop Jackson, Reverend Smith was expelled from the Conference. (Jackson Aff., para. 13). When Reverend Smith died, the Bishop or some other agent of the Conference attempted to prevent the funeral from being held at the church building. The Trustees refused to accept that ruling, and allowed Reverend Smith's funeral to take place at the church building.

That and other disputes eventually led the Trustees of the Mother Church to convene a special meeting of the membership on April 9, 1991, to vote on whether to secede and disaffiliate from the Conference. At that meeting, 82 of the approximately 185 members of the congregation attended, and by a vote of 68 to 10 (with 4 abstentions), the members determined to secede from the Conference. The Trustees also voted to secede. (A133, 136).

In anticipation of, or in response to, those actions, Bishop Jackson and/or the Conference took certain measures. They were as follows:

a) On April 6, 1991, Bishop Jackson witnessed eight quitclaim deeds that were recorded with the New Castle County Recorder of Deeds. One of those deeds purported to transfer the contested properties from the Mother Church to the Conference. (A28-35). The deed was not signed or authorized by the plaintiff

Trustees. According to Bishop Jackson, the deeds were executed pursuant to authority granted by resolutions adopted at Conference meetings held on January 12, 1991 and April 6, 1991. (Jackson Aff., paragraphs 21-23). However, no minutes or other document evidencing the proceedings at those meetings were ever placed of record.

b) On April 8, 1991, Bishop Jackson removed then-Pastor Gunther, and replaced him by appointing Thomas E: Moon as Pastor of the Mother Church.

c) On April 10, 1991 the Bishop and/or agents of the Conference purported to remove the plaintiff Trustees "as trustees and as members of the Church, according to church law as set forth in the *Book of Discipline* and in the April 6th resolution . . . ." (Jackson Aff., para. 14). Apparently that was done, in part, because the Trustees had refused to accept Reverend Moon as the Pastor.

d) On April 14, 1991, Reverend Moon asked three persons to be the new Trustees of the Mother Church.[7]

After the April 9, 1991 secession vote, Reverend Moon, with Bishop Jackson's permission, caused the locks on the Church building to be changed and posted security guards outside. (Moon Aff., paragraphs 4-5). As a result, and until this Court issued its temporary restraining order, the members of the congregation were forbidden access to the church building and prevented from worshiping there.[8]

This litigation followed.

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[7] In his affidavit, Reverend Moon states that his Trustee-designees were elected by a "congregation." (Moon Aff., para. 7). That statement is, however, conclusory and contains no specific facts as to who comprised that "congregation" or by what process that election took place.

[8] It is also claimed that Bishop Jackson attempted to remove funds from the Mother Church's bank accounts and to put the Church's properties up for sale. Those claims are, however, disputed and need not be decided on this motion.

## II.

This case represents but one aspect of a larger and highly regrettable controversy: a church divided. That lamentable circumstance inevitably leaves in its wake a host of spiritual and social problems, in addition to those purely legal. Who is now the minister of the congregation? Who are the Trustees? Who are and are not members of the Mother Church?[9] Of these questions this Court is competent to address only the legal, and even then only within the constraints of the First Amendment to the United States Constitution as interpreted by decisions of the United States Supreme Court.

Those decisions forbid civil courts from deciding church property disputes on the basis of religious doctrine and practice. Such courts may — indeed must — resolve such disputes only on the basis of "neutral principles of law," without considering doctrinal matters such as the "ritual and liturgy or the tenets of faith." *Jones v. Wolf*, 443 U.S. 595, 603 (1979) (quoting *Maryland & Va. Churches v. Sharpsburg Church*, 396 U.S. 367, 368 (1970)); *accord Presbyterian Church v. Hull Church*, 393 U.S. 440 (1969); *Serbian Orthodox Diocese v. Milivojevich*, 426 U.S. 696 (1976). Under a neutral principles approach, a civil court may consider, and resolve church property disputes on the basis of, sources such as state statutes, church corporate charters and constitutions, and the language of trusts, deeds and similar granting instruments. If, however, the interpretation of instruments of ownership would require the court to resolve a religious controversy, the court must defer that doctrinal decision to the authoritative ecclesiastical body. *Jones v. Wolf*, 443 U.S. at 604; *Serbian Orthodox Diocese*, 426 U.S. at 709.

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[9] To the extent this Court is empowered to answer those questions, the answer must await a final hearing. The questions are complex and cannot be decided at this preliminary stage. Indeed, neither counsel has fully briefed these questions.

Mindful of these highly sensitive concerns, the parties have cast their dispute largely on the basis of Delaware corporate and property law principles. And while the defendants have based certain of their preliminary injunction arguments upon the *Book of Discipline*, those arguments do not require this Court to interpret or determine religious doctrine. Essentially what must be decided at this preliminary stage is which corporation — the Mother Church or the Conference — owns the disputed properties. The remaining issues raised by the complaint (to the extent they are constitutionally cognizable) must await the final hearing.

The criteria on a motion for preliminary injunction are well established. The moving party must show probable success on the merits, imminent irreparable harm that will occur absent the injunction, and that the irreparable harm that would result if injunctive relief is denied outweighs the harm that would occur if relief is granted. *Ivanhoe Partners v. Newmont Mining Corp.*, Del. Supr., 535 A.2d 1334, 1341 (1987); *Robert M. Bass Group, Inc. v. Evans*, Del. Ch., 552 A.2d 1227, 1238 (1988).

In this case the harm threatened to the plaintiffs clearly will be imminent and irreparable if injunctive relief is denied. Such harm will also outweigh any likely harm to the defendants if relief is granted. What the plaintiffs will be deprived of is the unfettered use of their property, including their congregants' right to use the church building as a place of worship. Moreover, the defendants, by executing and recording the April 6, 1991 deed purporting to transfer the disputed properties to the Conference have seriously clouded the Mother Church's title to these properties. The harm occasioned by these acts is immediate and substantial, and it cannot be remedied except by an injunction. Nor is there any showing that granting preliminary injunctive relief would harm the defendants more than denying relief would harm the plaintiffs. The defendants intimate that the balance of equities favor their position, but offer no reasoned argument or any evidence to support their suggestion.

Consequently, this motion turns solely upon whether the plaintiffs have demonstrated that they will probably succeed on the merits after a final hearing. For the reasons now discussed, I find that they have, and that a preliminary injunction must issue.

## III.

Any analysis of the claims pertinent to this motion must begin with certain fundamental, undisputed facts. Before April 6, 1991, title to the disputed properties resided in the Mother Church. On April 6, 1991, the defendants executed a deed purporting to transfer title to those properties to the Conference. The question, simply put, is whether that April 6, 1991 deed was authorized by persons lawfully entitled to act on behalf of the Mother Church. If so, then no basis for injunctive relief exists; if not, then injunctive relief must be granted. As discussed in Part III A, *infra*, only the Mother Church's Trustees, with the formal concurrence of two-thirds of the members, are empowered to transfer those properties, and those persons never authorized the April 6, 1991 deed. The defendants contend, nonetheless, that despite the authority vested in the Mother Church's Trustees and membership, the *Book of Discipline* and certain purported amendments thereto give the Conference superior, overriding authority over the disputed properties. For the reasons discussed in Part III B, *infra*, I find that the defendants' position has no probable merit.

### A.

Article 4th of the Mother Church's certificate of incorporation provides that the Trustees "*shall not* by deed or otherwise dispose of any part or portion of the Estates, real or personal, which may be vested in the said Corporation . . . *unless* the same shall be done with the consent of two-thirds of the regular Members of the said Corporation." (Emphasis added). It is

undisputed that the plaintiff Trustees have never deeded any of the disputed properties to the Conference. Nor have two-thirds of the Mother Church membership ever approved any such property transfer or the execution of the April 6, 1991 deed.

Thus, based on the Mother Church's most fundamental corporate document – its certificate of incorporation – I find at the threshold that (a) the Mother Church owns the properties at issue, and (b) the April 6, 1991 deed purporting to transfer those properties to the Conference was void *ab initio*. For those reasons the plaintiffs have established a high probability of success on the merits of their claims, unless the defendants can demonstrate a superior claim of entitlement to the disputed properties. The defendants assert that they have demonstrated such a superior, overriding claim, arguing that (1) the Mother Church had always held the properties in trust for the Conference, and (2) representatives of the Conference possessed the requisite authority to transfer the properties on behalf of the Trustees.[10] I now address those contentions.

**B.**

The defendants premise their claim of superior entitlement upon their contention that the Conference is a hierarchical organization whose members (*i.e.*, the local churches, including the Mother Church) occupy a subordinate position that makes

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[10] In addition to their substantive contentions, the defendants raise two procedural defenses that, they urge, mandates the denial of injunctive relief. Defendants argue that the plaintiffs have no standing to seek relief because they are no longer members of the Mother Church. That argument, however, has been mooted by the joinder of the Mother Church as a party plaintiff. The defendants also contend that the Bishop is not a proper party defendant, because no relief would be effective as against him. That argument is mooted by the joinder of the Conference as a party defendant; moreover, the Bishop is a proper party defendant because the complaint, fairly read, alleges that the acts complained of were committed by him or by others acting under his control. Accordingly, neither procedural defense has colorable merit.

them subject to direction by the Conference in accordance with the *Book of Discipline*. The defendants rely upon two documents that, they claim are resolutions adopted by the Conference on January 12, 1991 and April 6, 1991, respectively, and constitute amendments to the *Book of Discipline*. The January 12, 1991 document pertinently provides that "titles to all properties held . . . by a local church . . . shall be held in trust for [the Conference]." (Jackson Dep., Exh. 3, p. 1). The April 6, 1991 document provides that "the ministers in charge of said [local] churches shall be empowered to sign official documents pertaining to the individual local church and the Conference. . . ." (Jackson Dep., Exh. 4). Based upon those documents, the defendants conclude that the April 6, 1991 deed transferring the properties to the Conference was valid, because (i) those properties were held in trust for the Conference, and (ii) the local minister had the authority to execute a deed transferring the Mother Church's property, notwithstanding the Trustees' and the members' authority conferred by the 1813 certificate of incorporation.

These arguments have no merit for several reasons.

*First*, while a hierarchical relationship between the Mother Church and the Conference may arguably exist in the religious and spiritual realms,[11] no such relationship has been shown to exist in the temporal realm that governs the ownership and control of the Mother Church's properties. The Mother Church's 1813 certificate of incorporation expressly provides the procedure by which any transfer of the corporation's assets must take place. To validly cede to another entity the Mother Church's power to dispose of its assets, the 1813 certificate provision mandating that procedure would have to be amended in an appropriate way. That has never occurred.

[11] The Court expressly disclaims making any finding as to whether a hierarchical relationship exists in the religious and spiritual realms. Even if such a finding were within this Court's sphere of competence, it is unnecessary to a resolution of the pending motion.

*Second*, it is undisputed that neither the plaintiff Trustees nor their predecessors have ever executed any document, ratified by two-thirds of the Mother Church's members, placing any of the Mother Church's assets in trust for the benefit of any other entity. Nor has any other evidence of a trust arrangement, particularly evidence that would satisfy the evidentiary requirements of the Statute of Frauds, been submitted. *See* 6 *Del. C.* sec. 2714(a). *See also* 76 Am. Jur. 2d, *Trusts*, sec. 44 at 290-91, 294 (1975).

*Third*, by the defendants' own characterization, those documents occupy, at best, the status of By-laws of the Mother Church. Assuming without deciding the validity of that characterization,[12] the January 12th "by-law" placing local church properties "in trust" for the Conference runs afoul of the principle that where a by-law conflicts with the provisions of the charter, the by-law is a nullity. 8 *Del. C.* sec. 109(b); *Centaur Partners v. Nat. Intergroup, Inc.*, Del. Supr., 582 A.2d 923, 929 (1990); *Burr v. Burr Corp.*, Del. Ch., 291 A.2d 409, 410 (1972). The January 12th document conflicts with the 1813 certificate of incorporation, because Article 2nd of the certificate states that the land is held in trust for the religious uses of the "said Union Church," which is now the Mother Church – not the Conference.[13] The April 6th document (which purports to empower the minister to transfer church property on behalf of the

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[12] For present purposes, the Court simply accepts *arguendo* Bishop Jackson's characterization that the *Book of Discipline* contains the current rules of the Church, which are the "by-laws of the corporation." (Jackson Aff., para. 9). Defendants' counsel also advocated that characterization at oral argument.

[13] At oral argument, defendants' counsel relied upon Article 2nd of the 1813 certificate of incorporation, which states that the church properties are held in trust for the religious uses of the "said Union Church." Counsel argued that the "Union Church" and the Conference were one and the same. However, the evidence shows precisely the contrary: the Conference (as an association) did not come into existence until 1866, and it did not take a corporate form until 1941. The 1813 certificate could not possibly have created a trust relationship in favor of an organization that did not then exist.

Trustees) conflicts with the certificate of incorporation, because Article 4th prohibits *any* disposition of Church assets without the approval of the Trustees and two-thirds of the corporation's members. Again, no such consent was given here.

*Fourth*, the documents, by their own terms, do not create any superior title or claim of title in the Conference. Section II of the January 12th document states that "All provisions of the Discipline relating to property . . . and relating to the formation and operation of any corporation . . . are conditioned upon their being in conformity with the local laws, and in the event of conflict therewith [sic] the local laws shall prevail. . . ." (Jackson Dep., Exh. 3, p. 3). "Local law" is defined to include "the laws of the county, state, or other like political unit within the geographical [sic] bounds of which the church property is located." *Id.* Thus, by its own terms, the January 12th "by-law" trust provision gives way to local law. Under local law, the Mother Church clearly owns the properties. See Part III A, *supra*. And while the April 6th document purports to empower the minister in charge to sign official documents pertaining to the individual local church, it does not authorize the minister to do so without the consent, or over the opposition, of the Trustees in matters where Trustee approval is required.

*Fifth*, the January 12th and April 6th documents do not constitute credible evidence that the Conference ever took the actions that the defendants attribute to it. Neither document appears on the stationery of the Conference: the letterhead is of an organization having a different name. The record contains no minutes or other documents evidencing official action taken by the Conference on those dates — only the Bishop's conclusory affidavit testimony is offered. Indeed, the Court is uncertain as to what these documents truly represent and the basis of their authenticity. Are they resolutions? Of what body? Are they part of the *Book of Discipline*? By what authority? While answers to these questions may well be forthcoming at

the trial stage, no answers have been provided here. On the present record these documents appear to be self-serving and, in all events, are unpersuasive.

## IV.

Having determined that the plaintiffs are entitled to preliminary injunctive relief, the Court must next decide what form that relief should take. One alternative is to continue the temporary restraining order in effect until this action is finally determined on its merits. The other alternative, which the plaintiffs advocate, is to enter an order that would effectively restore to the plaintiffs unrestricted control of the properties, *pendente lite*.

Because of the Court's preliminary rulings and of the issues still remaining to be determined at final hearing, there are several open questions that concern the governance of the Mother Church, and, consequently, the management of its property and affairs. These questions include the identity of the lawful Trustees and congregation, and whether the Mother Church has lawfully disaffiliated from the Conference. Should those questions be resolved in favor of the Conference, one result may be to empower the defendants to influence in some (as yet undefined) manner the management and disposition of the Mother Church's properties.

Given these uncertainties, the Court is persuaded that a form of interim injunctive relief that would altogether exclude the defendants from access to the Mother Church's properties at this stage is inadvisable. It would risk irreparably prejudicing the defendants' position before the case has been adequately presented and decided. That observation is not intended in any way to suggest my view of the ultimate outcome, but only to strike an appropriate interim balance between the legitimate interests of both sides. That balance, in my view, is best struck

by (i) continuing the temporary restraining order in effect until this action is finally determined on the merits, and (ii) scheduling a final hearing on an expedited basis, consistent with this Court's other commitments. That result will permit both sides of the dispute to have access to the church building until this litigation is resolved, and will minimize the risks inherent in giving either side unfettered control of the properties at this preliminary stage.

Accordingly, the plaintiffs' motion for a preliminary injunction is granted. The temporary restraining order previously entered shall remain in effect until further order of the Court. Counsel shall promptly confer with each other, and then with the Court to schedule expedited discovery and trial.

IT IS SO ORDERED.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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THE CONFERENCE OF AFRICAN UNION FIRST COLORED METHODIST PROTESTANT CHURCH and REV. R. C. SCOTT, and RICHARD GROSS,
Plaintiffs,

v.

WALTER C. CLEAVER and ROBERTA HARPER, et al.,
Defendants.

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Civil Action No. 2960-53

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Filed: 25 July 1955

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FINDINGS OF FACT AND
CONCLUSIONS OF LAW

The Court having considered the briefs filed by the parties upon a motion to dismiss the complaint made by the defendant on March 27, 1955, and having denied the motion, the above action came before the Court for trial on June 2, 1955. The Court, upon the entire record in the case, including testimony and oral argument,

makes the following findings of fact and conclusions of law.

I. Findings of Fact

1. African Union First Colored Methodist Protestant Church is a general church organization, or religious denomination, tracing its origin back to 1812, and having a Book of Discipline adopted by the denomination formulating and prescribing structure and relationship of subordination of member churches, or units, to the general religious organization.

2. One of the plaintiffs, viz., The Conference of African Union First Colored Methodist Protestant Church, a corporation organized under the laws of the State of Delaware, is the corporate embodiment of said general church organization. Another plaintiff, Richard Gross, is a member of St. Paul African Union First Colored Meth-

odist Protestant Church and has adhered to and continued to adhere to the Discipline and authority of the general church organization, or religious denomination. The third plaintiff, the Reverend Reese C. Scott, is president of the general church organization.

3. The defendant, St. Paul African Union First Colored Methodist Protestant Church, is organized as a corporation under laws in force in the District of Columbia, is a subordinate member church, or unit, of the said general church organization, or religious denomination, has subscribed and adhered to the Book of Discipline of said denomination, dedicated its property to the uses and purposes of said religious denomination, and for many years prior to June 15, 1953, received and employed pastors from said general church organization.

4. The property of the defendant corporation consists principally of a church building, with appropriate furniture and furnishings, situate at No. 326 I Street, Southeast, in Washington, District of Columbia.

5. On or about June 15, 1953, defendant severed "all connections" with the general church organization, the African Union First Colored Methodist Protestant Church, changed its name from "St. Paul African Union First Colored Methodist Protestant Church" to "St. Paul Methodist Church" and diverted said church property to the uses and purposes of the new and different "St. Paul Methodist Church." It also refused to permit the church property to be used by ministers of the general church organization.

II. Conclusions of Law

1. The Court has jurisdiction of this

action to enjoin the diversion of property, the legal title to which is held by a member church, or unit, of a general church organization, and which property had been dedicated to the uses and purposes of such general church organization, or denomination, to different, antagonistic or inconsistent uses and purposes.

2. The defendants, having diverted the property of St. Paul African Union First Colored Methodist Protestant Church to uses and purposes different from, antagonistic to or inconsistent with the uses and purposes of the general church organization known as African Union First Colored Methodist Protestant Church, have no right to such property.

/s/ J. W. Morris
Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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THE CONFERENCE OF AFRICAN UNION FIRST COLORED METHODIST PROTESTANT CHURCH and REV. R. C. SCOTT, and RICHARD GROSS,
Plaintiffs,

v.

WALTER C. CLEAVER and ROBERTA HARPER, et al.,
Defendants.

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Civil Action No. 2960-53

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Filed: 25 July 1955

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ORDER

Upon the basis of findings of fact and conclusions of law filed herewith, it is by the Court, this 25th day of July 1955,

Ordered:

1. That the defendants immediately cease to use the parcel of real property and the furniture and furnishings there situate at No. 326 I Street, Southeast, in Washington, District of Columbia, in any

manner inconsistent with or for any purposes other than the purposes of the religious denomination known as African Union First Colored Methodist Protestant Church.

2. That the defendants make only such use of the said property as is in conformity with the purposes of said religious denomination.

3. That the defendants pay the costs of this action.

/s/ J. W. Morris
Judge

IN THE COURT OF CHANCERY OF THE STATE
OF DELAWARE IN AND FOR NEW CASTLE COUNTY

MOTHER AFRICAN UNION FIRST COLORED METHODIST PROTESTANT CHURCH, et al.
Plaintiffs,

v.

THE CONFERENCE OF AFRICAN UNION FIRST COLORED METHODIST PROTESTANT CHURCH, et al.,
Defendants.

C. A. No. 12055

APPLICATION TO WITHDRAW APPEARANCE

COMES now the Defendants' attorney K. Kay Shearin and respectfully moves this Honorable Court, pursuant to Chancery Court Rule 5(aa), for an order withdrawing her appearance in this matter, and in support of this motion she avers:

1. On 2 April the Court purported to order me to transmit information from a member of the putative Plaintiff class in this case to Pastor Moon about scheduling a funeral at the Mother Church, and I refused, openly and based on an assertion

that the order was not valid, as Lawyers' Rule 3.4(c) requires.

2. I believe that order was procedurally invalid because, inter alia:

a. I am not a party to the litigation, and I have a right to due process before the Court exercises personal jurisdiction over me, and Rule 70 provides for the Court to issue orders only to parties;

b. Rule 7(b)(1) requires a motion on the record before the Court issues an order; and

c. an order must be on the record before it can be enforced, and Sup.Ct.R. 7(c)(3) requires a notice of appeal to designate the order to be reviewed, but the Court refused to put the order on the record.

3. I could not obey the Court's order without violating the Lawyers' Rules because, inter alia:

a. the Book of Discipline, at Article X, gives the pastor of the local church authority to schedule the church's use and does not authorize the presiding bishop to interfere, and my client Bishop Jackson has directed me not to interfere where he is not authorized to do so;

b. the Book of Discipline, at Article XIV, provides that the pastor is employed by the local church, so Pastor Moon is the Mother Church's agent, not the Conference's, and therefore the Court was ordering me to carry messages from my client's adversary to their own agent, a direct conflict of interest under Lawyers' Rule 1.7;

c. the Court was in fact ordering me to provide legal services to my client's adversaries without compensation, and a court cannot require an unwilling attorney to represent even an indigent party in

a civil case without compensation [Mallard v. United States District Court, 490 U.S. 296 (1989)];

d. the Bishop and I both believe that entering the TRO and preliminary injunction in this case violated the Constitutional requirement of separation of church and state, and for me, "as an officer of the Court," to participate in scheduling the church's rituals would be a direct violation of Lawyers' Rule 8.4(f);

e. The Book of Discipline, at p. 20, forbids anyone except a member in good standing to hold any office in the Church, and I am not a member, and the Court was in effect assigning me the office of scheduling rituals; and

f. one of the basic requirements for membership is a profession of belief in the Church's doctrine, set forth at pp. 11-18, and I do not subscribe to those beliefs or,

indeed, to any Christian beliefs because I am a pagan, a follower of the religion the Hebrews spent much of the Old Testament trying to eradicate, and my religious beliefs are abhorrent to many Christians, and it would be an unconscionable violation of both my First Amendment right of free exercise of religion and my clients' to force me, with such antithetical religious views to theirs, to participate in scheduling their rituals.

4. I am now in the untenable position that if I continue to represent my clients, the Court may again order me to participate in scheduling church rituals: I cannot do so without violating the Constitution and some of the Lawyers' Rules, and I cannot refuse without violating the Court's order, so Lawyers' Rule 1.16(a)(1) requires me to withdraw from representation.

5. Now that the Plaintiffs are moving

against me personally, I shall become a witness in the litigation, and therefore Lawyers' Rule 3.7(a) requires me to withdraw.

6. The conflict between my interests and my clients' is apparent in our disagreement over this motion: Although I am required by the Lawyers' Rules to withdraw, my clients oppose my withdrawal and ask the Court to deny this motion under Lawyers' Rule 1.16(c).

7. Bishop Jackson says if I am allowed to withdraw he will not obtain other counsel but will proceed pro se because, inter alia:

a. as the individual Defendant and the CEO of the corporate Defendant, he is satisfied with my work, and I am handling two related cases (one in Chancery, one in federal court in New Jersey) for one or both of the same clients and so am more fa-

miliar with the facts and issues than any lawyer he could hire now;

b. if he did find another lawyer, that lawyer would probably be in the same ethical dilemma very shortly; and

c. as we are hopeful the Court will deliver its decision in this case shortly, there should not be very much left to do in this case, and it should not remain open for very long.

8. Bishop Jackson wants me to remain his lawyer, instead of having to proceed pro se, because he has a full-time job in Maryland, and his employer is displeased when he has to be absent, so it would be a personal hardship for him to have to take off from work to attend proceedings.

9. I submit that although the Court may have to hear the Bishop and me, on the record, before ruling on this motion, the Plaintiffs have no standing to take any po-

sition in this conflict between my client and me, and therefore they cannot file any brief in answer to this motion and cannot argue at any hearing on it.

10. I further submit that the existing conflict of interests makes it inappropriate for the Court to order briefing on the motion from either the Bishop or me, either.

Respectfully submitted,

K. Kay Shearin
Attorney for Defendants

Dated: 6 April 1992

TEXT OF 18 SEPTEMBER 1991 LETTER

FROM DEFENDANTS' COUNSEL

TO CHANCERY COURT IN C.A.NO. 12055

Dear Vice Chancellor Jacobs:

When I got home from court on Tuesday I had a message from Pastor Moon saying he had been thrown out of the courthouse; when I called him back he told me that about 2:15 p.m. Tuesday, in the hall outside the courtroom where you were trying the case, Mr. Neuberger took back the subpoena served on Pastor Moon, told him he would not be called to testify, and ordered him off the premises. I asked the pastor if he could have made any mistake about what Mr. Neuberger said, and he said not, that Mr. Neuberger said if he stayed in the courthouse Mr. Neuberger could change his mind and make him testify after all, so he had to leave the courthouse. The pastor did not want to leave, he wanted to come into the

courtroom and observe the rest of the proceedings, in which he has substantial interests.

Mr. Neuberger's conduct was outrageous. He knows that I represent Pastor Moon, yet he presumed to give him gratuitous legal advice about his exposure to service of another subpoena and prevented him from entering the courtroom to consult me. Mr. Neuberger must know that any person had the right to enter that courtroom--that is what "open court" means--and, as the Bishop's appointee to the Mother Church, Pastor Moon is the person who will be most affected by the outcome of this trial.

There is no way to remedy this situation now, but the pastor is upset about it, and I am furious. Now that it has been brought to your attention, I trust you will deal with it as, and if, you think warranted.

/s/ K. Kay Shearin

TEXT OF 11 MAY 1992 LETTER

FROM DEFENDANTS' COUNSEL

TO CHANCERY COURT IN C.A.NO. 12055

Dear Vice Chancellor Jacobs:

This is the letter you directed me to submit by today responding to the question of whether I have violated Rule 11. I respectfully submit that I have not, and I do not understand the basis for your suggestion that I have.

I said in my 9/18/91 letter to you that Mr. Neuberger knew I represented Pastor Moon but had given the Pastor legal advice, and wrong advice at that, about his exposure to service of another subpoena. That was true--I had represented Pastor Moon and the Mother Church before this case was filed and said so in a 4/17/91 letter to the Mother Church's bank. I said in my application to withdraw my appearance that Pastor Moon is the plaintiffs' agent, and

that is true, too--the Book of Discipline provides that the pastor is hired by the local congregation, so the Pastor is the Mother Church's employee and always has been.

It is not uncommon for an employee of a corporation to be engaged in litigation with that employer and to have a lawyer advising and representing him. In my personal and professional experience, what usually happens is that anything about the litigation is communicated via the parties' attorneys, but the parties continue to communicate directly within the employment relationship. By that I mean that when I was an employee suing my employer, my lawyer notified me when she received a communication from my employer's attorneys about the litigation, but there was no change in the way my supervisor and I communicated about business matters in the course of my work.

That is the same situation we have here: It was improper for Mr. Neuberger to give Pastor Moon legal advice about his status as a witness in the litigation because I am the Pastor's lawyer, but scheduling funerals is the Pastor's job, and telling him to do so is squarely within his employment relationship with the plaintiffs and nothing to do with the litigation.

When this suit was filed, it created the potential for conflicts of interest between the Conference and the Pastor, so I advised both those clients of that possibility, and they both consented to my continued representation, but the relationships between the parties to the litigation and the Pastor have made the line I have had to walk rather narrow. I believe that I have complied with the letter and spirit of every applicable ethical rule, and the fact that the disciplinary panel

reviewed my conduct and unanimously dismissed all allegations against me on 27 January encourages me in that belief.

I repeat, I do not understand what inconsistency you perceive in my representations to you, but I hope I have sufficiently addressed the issue.

/s/ K. Kay Shearin